HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.22986 of 2005

Date: October , 2007

Between:
Chowdeswari Devi Oriental and General
High School, Yerramukkalapalli, Cuddapah,
Rep. by its Secretary and Correspondent
G.Mohan, s/o G.Subba Reddy, r/o Cuddapah. … Petitioner

And

1. Government of Andhra Pradesh,
   Education (PS) Department,
   Rep. by its Secretary, Secretariat Buildings,
   Hyderabad and another. … Respondents

* * *

ORDER:

This writ petition is filed for a writ of *Mandamus* to set aside proceedings dated 29.9.2005 issued by the Government of Andhra Pradesh, Education (PS) Department-respondent No.1, whereby the petitioner's claim for admission of 24 teaching and non-teaching staff posts to grant-in-aid was rejected. The petitioner also sought for a direction to admit the said posts into grant-in-aid.

2. Shorn of unnecessary details, the relevant facts are as follows:-

A school in the name of Sivasri Oriental Elementary School, Sastri Nagar, Akkarampalli, Cuddapah District, was given temporary recognition for the year 1975-76 by the Director of School Education vide his proceedings Rc.No.1735/53/75, dated 26.3.1976, to run the school with classes I to V. Evidently it was upgraded as an upper primary school to teach up to the Class VII (the available record does not contain specific information in this

regard). The Regional Joint Director of School Education, Cuddapah, accorded post facto permission to the said school for opening Classes VIII to X with effect from 1990-91 “without aid now and in future”. It appears that the name of the school was permitted to be changed from Sivasri Oriental School to Chowdeswari Devi (O) High School, by the District Educational Officer’s proceedings dated 29.6.1996. The District Educational Officer, Cuddapah vide his proceedings dated 05.02.1998 granted permission to open parallel sections in Telugu medium and English medium (General) with Classes IX and X during the year 1997-98 subject to certain conditions contained therein.

3. The school was sanctioned grant-in-aid from time to time. The petitioner had been appointing its teaching and non-teaching staff and it claims that after following procedure prescribed in G.O.Ms.No.1, dated 01-01-1994 it has appointed as many as 43 teaching and non-teaching personnel against various posts and made a representation on 09-02-2000 to the competent authority to admit the said posts to grant-in-aid. As the said request did not yield any response, the petitioner filed W.P.No.13541 of 2001 in this Court. Pending the writ petition, the District Educational Officer, Cuddapah, forwarded his proposals to the competent authority (respondent No.1) for admitting the said posts to grant-in-aid. In view of this development the said writ petition was disposed of by this Court on 03-4-2003 with a direction to respondent No.2 herein to place the recommendations of the District Educational Officer, Cuddapah, before the High Level Committee for taking appropriate action. In the said order the number of posts for which proposals were made was mentioned as 37.

4. In compliance with the orders of this Court mentioned above, the High Level Committee recommended admission of only 19

posts into grant-in-aid and accordingly respondent No.1 issued G.O.Ms.No.143, EDUCATION (PS-2) DEPARTMENT, dated 16.12.2003. Feeling aggrieved by rejection of proposals for the balance of 24 posts (according to the petitioner the total number of posts for proposals were made was 43 and not 37 as noted in the order dated
03-4-2003 in W.P.No.13541 of 2001) the petitioner filed W.P.No.23163 of 2004. The said writ petition was disposed of by this Court by an order dated 14.12.2004. The learned Single Judge, without entering into the merits of the case, gave a direction to the respondent No.1 to pass orders on the proposals submitted by petitioner's school and also basing on the recommendations of the competent authority within a period of three months from the date of receipt of the order. The petitioner filed Contempt Case No.339 of 2005 alleging willful disobedience of the said order passed in W.P.No.23163 of 2004. While the said contempt case was pending, respondent No.1 issued the impugned memo by which the petitioner's request for admitting the balance 24 posts into grant-in-aid was rejected.

5. Sri S.Balasubramanyam, Director of School Education, Andhra Pradesh, Hyderabad, filed a counter-affidavit. It is averred therein that the petitioner filed W.P.No.13541 of 2001 seeking grant-in-aid for 37 posts as per his request made on 09-02-2000; that the District Educational Officer in pursuance of the interim order dated 03-4-2003 granted by this court in W.P.No.13541 of 2001 submitted proposals for admission of 43 unaided posts; that the proposals were placed before the High Level Committee held on 07-5-2003 and that the High Level Committee examined the said proposals and recommended 19 unaided posts to admit into grant-in-aid as per the eligible criteria and accordingly respondent No.1 issued orders vide G.O.Ms.No.143, dated 16.12.2003. It is

further stated that the High Level Committee rejected the proposals for the remaining 24 posts relating to general sections (parallel Telugu and English medium sections) as they were not eligible for admission into grant-in-aid as per the provisions contained in Act 22/1988 and other relevant Rules. It is also averred that the sections in respect of which grant-in-aid is sought are opened in the year 1996-'97 and are the parallel general sections to the originally established oriental school and that the posts relating to oriental sections which were opened prior to 01-9-1985 were admitted to grant-in-aid as per the provisions of the Act 22/1988 and the relevant grant-in-aid Rules. The counter-affidavit also termed the petitioner's request for admission of all the 43 posts into grant-in-aid as not genuine.

6. Heard Sri P.Gangaiah Naidu, learned senior counsel for the petitioner and the learned Assistant Government Pleader for School Education for the respondents.

7. The learned counsel for the petitioner submits that the ground of rejection of the proposals for admitting 24 posts to grant-in-aid is *per se* unsustainable. The learned counsel contended that on the facts of the case Section 4 of the Andhra Pradesh Private Educational Institutions Grant-in-Aid (Regulation) Act, 1988 (for short "the Act") has no application to the petitioner's case for the simple reason that while the said provision applies to the schools which were admitted to grant-in-aid prior to 01-4-1977, the petitioner's school was admitted to grant-in-aid after 01-4-1977 (according to the learned counsel it was admitted in the year 1979). The learned counsel, therefore, strenuously contended that the petitioner's request was rejected without application of mind and the order is, therefore, liable to be set aside on this short ground and the respondents may be directed to re-consider the petitioner's claim for admission of 24 posts into grant-in-aid

afresh.

8. The learned Assistant Government Pleader, however, submits that the High Level Committee, which is competent and to which a direction was given by this Court in W.P.No.13541 of 2001, considered and recommended for admitting 19 posts out of 43 posts to grant-in-aid and that the expert body having duly considered and rejected the proposals for admitting 24 posts to grant-in-aid, this Court would not substitute its view for the view taken by such an expert body.

9. I have carefully considered the respective submissions and perused the record. In the first place it is necessary to consider whether the respondents were justified in placing reliance on Section 4 of the Act in the impugned memo. Section 4 of the Act reads as under:-

> **"Sec.4. Release of grant-in-aid in respect of certain additional sections and posts:-** Notwithstanding anything contained in G.O.Ms.No.344, Education (SSE) Department, dated the 22nd July, 1985, no school admitted to grant-in-aid prior to the 1st April, 1977 shall be entitled to receive any grant-in-aid with respect to any additional sections opened or posts created after the 1st April, 1977 (unless the Committee concerned constituted in G.O.Rt.No.220, Education (SSE-I) Department, dated the 24th February, 1988 as modified in G.O.Rt.No.124, Education (SSE-I) Department, dated the 27th January, 1989 and the Government Memo.No.245/SSE-I/89-1,Education Department, dated the 9th February, 1989 recommends the release of Grant-in-aid in respect of such additional sections and posts."

From the above reproduced provision it is clear that a school

which was admitted to grant-in-aid prior to 01-4-1977 is not entitled to receive any grant-in-aid with respect to any additional sections opened or posts created after 01-4-1977 without the recommendations of the committee concerned constituted in G.O.Rt.No.124, dated 27.01.1989 and the Government Memo, dated 09.02.1989. Whether a different set of procedure is envisaged in respect of the schools admitted to grant-in-aid after 01-4-1977 for giving grant-in-aid for additional sections is neither contained in the Act nor the learned counsel threw any light on the same.

10. Be that as it may, the primary question is whether Section 4 of the Act applies to the petitioner's case or not. If the petitioner's school was admitted to grant-in-aid prior to 01-4-1977 this provision applies and otherwise it will not apply. In the affidavit it is specifically asserted by the petitioner that the school was admitted to grant-in-aid in the year 1979. However, the counter-affidavit is silent on this aspect. But, I have carefully gone through the record produced by the learned Assistant Government Pleader in which I find G.O.Ms.No.345, EDUCATION DEPARTMENT, dated 28.3.1977, in which respondent No.1 sanctioned a sum of Rs.1.00 lakh towards payment of "ad-hoc grants" to oriental schools during 1976-77 as indicated in the annexure to the order. The annexure contained as many as 24 schools and Sivasri Oriental Elementary School, Sastrynagar, Cuddapah was shown at serial No.7 and an amount of Rs.5,000/- was sanctioned as ad-hoc grant. In the proposals dated 20.3.2003 submitted by the District Educational Officer, Cuddapah it is mentioned that the name of the petitioner's school was changed from Sivasri Oriental High School to Chowdeswari Devi (O) High School in the D.E.O's proceedings dated 29.6.1996 and the school received ad-hoc grant during the year 1976-77. Evidently for this reason that respondent No.1

treated the petitioner's case as falling under Section 4 of the Act. The question whether the ad-hoc grant amounts to admitting an institution to grant-in-aid to attract Section 4 or not has neither been raised nor argued. Therefore, it is not possible to give any finding on this aspect. However, having regard to the fact the petitioner institution with its pre-cursor received grant prior to 01-4-1977, respondent No.1 treated the petitioner as falling under the provisions of Section 4 of the Act. Therefore, I am not prepared to accept the contention of the learned counsel for the petitioner that rejection of the petitioner's application for grant-in-aid in respect of 24 posts by referring to Section 4 of the Act indicates non-application of mind on the part of respondents.

11. The learned counsel for the petitioner placed reliance on the order dated 17.11.2006 in W.P.No.7537 of 2006 passed by this Court. A perusal of the order in the said writ petition shows that grant-in-aid to the school which was subject matter of the said writ petition was admittedly sanctioned after 01-4-1977. Therefore, the said order has no application to the present case.

12. Further question to be considered is whether the order dated 29.9.2005 impugned in this writ petition can be sustained even if respondent No.1 was justified in placing reliance on Section 4 of the Act. The effect of application of Section 4 of the Act is that in respect of the schools falling in the said provision, no grant-in-aid can be released in respect of additional sections without recommendations of the committee concerned constituted in the Government Order dated 24.02.1988 as modified by the Order dated 27.01.1989 and the Memo dated 09.02.1989.

13. A perusal of the impugned order shows that rejection of admission of 24 posts to grant-in-aid was solely based on the

committee's decision not to recommend in favour of admission of the said posts to grant-in-aid. A perusal of the record reveals that the committee considered the application of the petitioner under four different categories viz., English Medium in respect of classes I to V, Telugu Medium for classes I to V, Elementary sections (one SGBT post) and Secondary Section in respect of 11 posts. In respect of English Medium, the committee made the following endorsement.

"EM Sections are not eligible as per Act 22 of 1988"

For Telugu medium the committee recommended to the effect

"Not eligible for any post as per Act 22 of 1988"

For Elementary Section the committee recommended for admissions of 'one SGBT post' and for Secondary Section the recommendation reads as under.

"Only teaching posts (six) as per Col.12 recommended"

14. As evident from the above extracted endorsements by which the request for admission of the posts to grant-in-aid was rejected either in part or in full, no reasons, whatsoever, have been assigned by the committee except mentioning that they are not eligible as per Act 22 of 1988. The committee has not taken note of relevant provisions of the said Act on the basis of which it has arrived at the said conclusion.

15. It is well settled by a long-line of judgments that duty to assign reasons is a facet of principles of natural justice and reference in this regard can be made to a recent judgment of the Supreme Court in **Rajeshkumar V. Dy.CIT**[1] in which these principles are re-stated. Not only that the decision of the

committee is not supported by reasons, even the counter-affidavit is silent as to the grounds on the basis of which the petitioner's claim was rejected. The respondents merely relied upon the committee's decision in their counter-affidavit and since the rejection of petitioner's claim in respect of 24 posts is not based on any reasons whatsoever, except a vague reference to the Act, the order under challenge is liable to be set aside.

16. In the result, the writ petition is allowed. The order impugned in this writ petition is set aside. Respondent No.1 is directed to re-consider the petitioner's claim for admission of the 24 posts to grant-in-aid after referring the issue once again for the committee. The committee shall give reasons in the event of rejection for admitting the posts to grant-in-aid. In such an event respondent No.1 shall communicate the reasons to the petitioner. This exercise shall be completed within a period of eight (8) weeks from the date of receipt of this order. No costs.

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(C.V.NAGARJUNA REDDY, J)

Date: October , 2007.
BSB

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[1] (2007) 2 SCC 181